

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600**

ACLC No. R4-2011-0130-M

REVISED NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

DISCHARGER

Amir Development Company

DISCHARGE LOCATION

Wilshire/Carson Office Building
8641 Wilshire Boulevard
Beverly Hills, CA

RECEIVING WATER

Ballona Creek

Administrative Civil Liability Complaint (ACLC) No. R4-2011-0130-M alleges that Amir Development Company violated Order No. R4-2008-0032 by failing to comply with effluent limits set forth in the permit. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a mandatory minimum penalty of \$72,000 be assessed against Amir Development Company for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: September 20, 2012

Time: 9:00 A.M.

Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in Section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in Section V below) so that it is received by **5:00 pm on August 22, 2012**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Amir Development Company
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in Section VIII below so that it is received by **5:00 pm on July 27, 2012**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Chris Lopez, Environmental Scientist. Ann Carroll, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Carroll nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Chris Lopez
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6806
chlopez@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **July 11, 2012**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Amir Development Company is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any legal and technical arguments and testimony the Party intends to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on August 10, 2012**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **September 5, 2012**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed mandatory minimum penalty, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on June 15, 2012**. If possible, please submit written comments in Word format electronically to chlopez@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on August 10, 2012** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. *Ex Parte* Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Mr. Samuel Unger, and a Legal Advisor, Ms. Jennifer Fordyce, Staff Counsel for the Regional Board. Neither Mr. Unger nor Ms. Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on August 10, 2012.**

Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
JFordyce@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in Section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in Section C.2, by **5:00 pm on August 10, 2012** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: May 11, 2012